IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 21.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.1718 of 2000
& CMP No.14826 of 2000

1.Tamil Nadu Wakf Board,
rep. by its Chairman,
3, Santhome High Road,
Chennai-4.

2.The Chief Executive Officer-cum-
Secretary,
Tamil Nadu Wakf Board,
3, Santhome High Road,
Chennai-4. ... Appellants/
Respondents 1 & 2

Vs.

1.Tamil Nadu Real Estates Ltd.,
rep. By Director,
S.A.Ispahani,
15, Nungambakkam High Road,
Chennai-600 034.

2.Raza Ali,
Managing The Muthavalli
Hujjathul Qiyam Wakf,
7, Akbar Sahib Street,
Chennai-5. .. Respondents/
3rd Respondent

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Writ appeal filed under Clause 15 of the Letters Patent against the order dated 24.08.2000 made in W.P.No.27 of 2000 under Article 226 of the constitution of India calling for the records in item No.67/99 in RC 977/C2 MDS/96 dt.20.11.99 and quash the order passed therein by the first respondent.

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For Appellants : Mr.S.A.Hafiz
For 1st respondent : Mr.V.Ramajagadeesan

For 2nd respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 24.08.2000 made in W.P.No.27 of 2000, in and by which, the learned single Judge has quashed the impugned proceedings of the Tamil Nadu Wakf Board and restored the original resolution.

2. Heard the learned counsel appearing for the appellants as well as the contesting first respondent.

3. In view of the order to be passed hereunder, we are of the view that it is unnecessary for this Court to traverse all the factual details as stated by the appellants and contesting first respondent.

4. It is not in dispute that during the pendency of the writ petition as well as writ appeal, pursuant to the joint venture agreement, the first respondent herein-writ petitioner has completed the construction and entrusted four apartments to the Wakf Board and sold other six apartments. In this regard, it is useful to refer Paragraph 3 of the affidavit, dated 16.10.2006, of the first respondent herein- the Director, Tamil Nadu Real Estates Private Limited, which reads as follows:

> "The respondent submits that as per the Joint Venture Agreement, the respondent was allotted seven apartments for his 55% of share and the area of each apartment is 750 sq.ft., each and the total building built up area allotted to the respondent works out to 5300 sq.ft. As per the joint venture agreement, the respondent is entitled to sell the share area for the cost of his construction and accordingly he has entered into a building agreement with third party purchasers and as per the joint venture agreement, the Muthavalli of the Wakf executed registered sale deeds in favour of third party purchasers. The Wakf was allotted four apartments measuring 1700, 1100, 700, 700 sq.fts., and total area allotted to the Wakf measures 4200 sq.ft., and the same was handed over to the Wakf on 18.09.2000. The Wakf has

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taken possession of those four apartments including two car parking areas and leased out the same to third parties. The Wakf is receiving a monthly rental of Rs.15,000/- from the said apartments and the yearly income for the Wakf works out to Rs.1,80,000/-. Muthavalli of the Wakf submitted the periodical accounts to the Wakf Board, which was approved by the Wakf Board and Muthavalli is also periodically remitting the contribution to the Wakf Board at the rate of 7% from the total income, which was also received and acknowledged by the Wakf Board. Therefore, the joint venture agreement is fully implemented and third parties interest intervened and therefore, nothing survives in the writ appal and the above writ appeal has become infructuous. Since Wakf Board approved the accounts submitted by the Muthavalli subsequent to the filing of the writ appeal and received the contribution at the rate of 7% of the total income realised from the newly constructed building. Therefore, the Wakf Board has fully ratified the implementation of the joint venture agreement and therefore nothing survives in the writ appeal, that apart the Wakf is very much benefited by the joint venture agreement. Before the joint venture agreement, there was an old and dilapidated building, which was in dangerous condition and the Wakf was receiving only a sum of Rs.1,000/- per month as rent and the yearly income was only Rs.12,000/-. Even that Rs.1,000/- was not realised by the Wakf since the tenant occupied were chronic defaulters. The respondent has stated in his affidavit filed in support of the writ petition and they have paid rupees eight lakhs to the earlier tenants occupied in the said dilapidated building for vacating the said tenants. Therefore, the Wakf is fully benefited by the joint venture agreement and in the interest of Wakf, the writ appeal should be dismissed. The entire proceedings, even in the typed set of papers by the appellant in the writ appeal would reveal that there is no secret dealing and all the dealings are transparent and the dealings were taken place only after publishing in the Gazette and in the Newspapers and by the Notification by the Tamil Nadu Wakf Board and after inviting objections and after conducting oral hearings, the agreement was finalised. Apart from that, there was no mis-representation on the part of the respondent or any secret dealings by the respondent with Muthavalli or Wakf Board and therefore, the respondent should not be penalised for the mistake if any committed by the Wakf Board. If the Wakf had sold the land, it would have fetched only Rs.40 lakhs. But on the other hand by way of the joint venture agreement, the

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Wakf had got the property by way of built up area, which would be more than Rs.80 lakhs. Hence by the joint venture agreement, the Wakf is benefited."

5. It is clear from the above information that as per the joint venture agreement, the first respondent herein was allotted seven apartments for 55% of share and the area of each apartment is 750 sq.ft., and the total built up area allotted works out to 5300 sq.ft. It is further seen that the Wakf was allotted four apartments measuring 1700, 1100, 700 and 700 sq.fts., and total area allotted to the Wakf is 4200 sq.ft. It is also specifically stated that the possession of those four apartments including two car parking areas were handed over to the Wakf on 18.09.2000 and the same have been leased out to the third parties and the Wakf is receiving monthly rental income of Rs.15,000/- from the said apartments and the yearly income is Rs.1,80,000/-. There is no reason to disbelieve the details mentioned in paragraph 3 of the affidavit filed by the first respondent herein/writ petitioner dated 16.10.2006.

6. Though the learned counsel appearing for the appellants/Wakf Board persistently prayed to give a finding regarding joint venture agreement, in view of the subsequent development, i.e., construction of the entire building based on the joint venture agreement, allotment of certain apartments to the Wakf and as on date, Wakf is getting rental income, we are of the view that such question is mere academic at this juncture. In view of the same, we are of the opinion that there is no need to go into the said aspect. Considering the information in the form of an affidavit and taking note of the fact that the Wakf is getting rental income of Rs.1,80,000/- per annum, we do not find any valid ground to interfere with the order of the learned single Judge. Consequently, the writ appeal fails and the same is dismissed. No costs. C.M.P.No.14826 of 2000 is also dismissed.

सत्यमेव जयते

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Chairman,
Tamil Nadu Wakf Board,
3, Santhome High Road,
Chennai-4.

2.The Chief Executive Officer-cum-
Secretary,
Tamil Nadu Wakf Board,
3, Santhome High Road,
Chennai-4.

+1cc to M/s. S.A.Hafiz, Advocate Sr 56774

JSK (CO)
km/4.12.

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